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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,585	08/25/2003	Amlan Datta	129843.1102	4088
60148	7590	09/19/2007	EXAMINER	
GARDERE / JAMES HARDIE GARDERE WYNNE SEWELL, LLP 1601 ELM STREET SUITE 3000 DALLAS, TX 75201			DEHGHAN, QUEENIE S	
		ART UNIT	PAPER NUMBER	
		1731		
		MAIL DATE		DELIVERY MODE
		09/19/2007		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/648,585	DATTA ET AL.	
	Examiner Queenie Dehghan	Art Unit 1731	
<b>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</b>			
THE REPLY FILED <u>10 September 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.			
<p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires <u>4</u> months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>			
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p><b>NOTICE OF APPEAL</b></p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p>			
<p><b>AMENDMENTS</b></p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p>			
<p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>			
<p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: <u>1-24</u>.</p> <p>Claim(s) withdrawn from consideration: _____.</p>			
<p><b>AFFIDAVIT OR OTHER EVIDENCE</b></p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p>			
<p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p>			
<p><b>REQUEST FOR RECONSIDERATION/OTHER</b></p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u></p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____.</p>			

Continuation of 11. does NOT place the application in condition for allowance because: Several arguments were presented. First, the alkali metal oxides content in the Matthews reference. It is agreed that the 20% indicates the soda oxide content in the precursor material, i.e. composition 2, 3 4 or 5. The applicant further states that Matthews relied on a high soda oxide content because of a prior-held understanding that such high amounts were required as a binder to form microspheres in the size range provided by Matthews. The Matthews reference was reviewed and it was indicated that the high temperature glass former increases the viscosity to form the large microspheres and that the high temperature glass former is the soda feldspar. The direct link that "alkali metal oxides" is the major factor in forming large microspheres does not appear to be present in the Matthews reference. Instead, soda feldspar is the factor listed and it comprises other components, such as aluminum oxide and silica.

Secondly, the applicant argues the combination of Matthews with Matsubara, in particular the difference in the size of microspheres obtained and the alkali metal oxide content. Regarding the size of the microsphere, the Matsubara reference was not used to teach a size of microspheres, especially since Matthews already discloses larger microspheres. Matsubara specifically controls his droplet size by factors such as pressure to ensure his desired microsphere size and even indicates that lower pressure would result in larger microspheres. Furthermore, the combination of the two references were based on the teaching of Matsubara regarding the alkali metal oxide content, specifically that a lower alkali metal oxide content is desired to affect the chemical resistance of the micropshere. There is not indication that the lower alkali metal oxide content affects the size of the microspheres made. Also, Matsubara indicates the capability of manufacturing microsphers up to 30 microns, which falls within the "about 30 microns". It appears to be a mere allegation that there would be no reasonable expectation of success. Therefore, the two references are combinable.



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